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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re)	Case No. 13-17297-B-11
Maria Rosa Pedro,)	DC No. UST-1
Debtor.)	

**MEMORANDUM DECISION REGARDING UNITED STATES
TRUSTEE'S MOTION TO DISMISS**

Robin Tubesing, Esq., appeared on behalf of the movant, Tracy Hope Davis, Esq., United States Trustee.

Thomas O. Gillis, Esq., appeared on behalf of the debtor, Maria Rosa Pedro.

René Lastreto II, Esq., and Michael J. Gomez, Esq., of Lang, Richert & Patch appeared on behalf of the secured creditors Farm Credit West, PCA and Farm Credit West, FLCA.

The United States Trustee (the "UST") moves to dismiss this case pursuant to 11 U.S.C. § 1112(b)¹ (the "Motion"). The UST asks that the case be dismissed on numerous grounds. The Motion was subsequently joined by secured creditors Farm Credit West, PCA and Farm Credit West, FLCA (hereafter "FCW"). For the reasons set forth below, the Motion will be granted. The case will be dismissed.

This memorandum decision contains the court's findings of fact and conclusions of law required by Federal Rule of Civil Procedure 52(a), made

¹Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as enacted and promulgated *after* October 17, 2005, the effective date of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, Apr. 20, 2005, 119 Stat. 23.

1 applicable to this contested matter by Federal Rule of Bankruptcy Procedure 7052
2 and 9014(c). The court has jurisdiction over this matter pursuant to 28 U.S.C.
3 § 1334, 11 U.S.C. § 1112(b), and General Orders 182 and 330 of the U.S. District
4 Court for the Eastern District of California. This is a core proceeding as defined in
5 28 U.S.C. § 157(b)(2)(A).

6 **Background Findings of Fact.**

7 The debtor, Maria Rosa Pedro (the “Debtor”) filed a voluntary petition for
8 relief under chapter 11 of the Bankruptcy Code on November 13, 2013. The Debtor
9 owns a dairy located in Stratford, California, however, her official residence is
10 declared to be in Pismo Beach, California. Significant questions have arisen during
11 this case, and during discussions at the various case management conferences,
12 regarding the level of the Debtor’s personal attention to the day to day operations of
13 the dairy and the performance of her duties as a debtor-in-possession. Indeed, a
14 disclosure statement filed by the Debtor on February 26, 2014, states that the dairy
15 is managed by the Debtor’s son, Durbin Pedro who draws a salary of \$5,000 per
16 month for his efforts. Durbin Pedro’s wife works as the “bookkeeper and clerk” for
17 a compensation of \$2,500 per month.

18 The Debtor’s schedules and the disclosure of her financial condition have
19 been a “moving target” in this case. Based on the initial schedules filed with the
20 petition, the dairy and adjoining farm land (4 parcels of property; the “Land”) had a
21 value of \$120,000. The Land is subject to a first priority mortgage held by FCW in
22 the amount of \$1.985 million and a second priority lien in favor of Western Milling
23 in the amount of approximately \$460,000. The Debtor’s dairy herd, feed and
24 equipment were valued in the schedules at \$1.5 million. They are subject to a lien
25 in favor of FCW in the amount of \$1.1 million. The Debtor’s initial Summary of
26 Schedules reports total assets in the approximate amount of \$2.23 million, against
27 debts in the amount of \$4,475,031 (\$3,594,703 secured and \$880,328 unsecured).

28 The Debtor amended her schedules on December 5, 2013, to add some

1 omitted unsecured creditors, which increased the unsecured debt to approximately
2 \$947,000. The Debtor again amended her schedules on February 4, 2014, to include
3 a \$7,000 priority claim. Finally, on March 24, 2014, three days before the continued
4 hearing on this Motion, the Debtor again amended her schedules to increase the
5 value of her Land to \$1.687 million and her secured debts to approximately \$4.175
6 million. Based on the third amended Summary of Schedules, the Debtor has total
7 assets in the amount of \$3,525,900 against debts in the amount of \$5,129,988
8 (which includes \$947,365 of unsecured debt).

9 The UST's Motion is supported by evidence, based on the Debtor's financial
10 records, to show that the dairy operation lost a significant amount of money in 2012
11 and prior to the bankruptcy filing in 2013. Based on the Debtor's first monthly
12 operating report, the dairy continued to lose money after commencement of the
13 bankruptcy. The evidence also showed that the dairy had approximately \$7,000 of
14 prepetition administration liability under § 503(b)(a) (which wasn't added to the
15 amended schedules until February 4th). Evidence in support of the Motion also
16 included testimony from the first meeting of creditors upon which the UST contends
17 (1) the Land has serious environmental problems and (2) the Debtor has no
18 reasonable likelihood of reorganizing within a reasonable period of time.

19 In response to the Motion, the Debtor filed a three-page opposition without
20 any supporting evidence upon which the court could make any finding in favor of
21 the Debtor. The court first heard the Motion on January 30, 2014, in conjunction
22 with the case management conference.² The court continued the Motion to February
23 27th and admonished Debtor's counsel that the court would probably rule on the
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25 ²At the previous case management conference hearing, the Debtor's counsel reported
26 that the dairy needs a new well pump and cannot properly dispose the effluent without a
27 sufficient water supply. At the January 30th hearing, Debtor's counsel represented, *inter*
28 *alia*, that the Debtor cannot afford to fix the well pump and remedy the water supply
problem until she sells 80 acres of the Land, but the Land is WFC's collateral and WFC has
not agreed to release any cash proceeds to repair the well.

1 Motion if a confirmable chapter 11 plan had not been filed.

2 Prior to the continued hearing, the UST filed a supplement to her Motion
3 setting forth additional grounds for dismissal, including (1) failure to appear for and
4 complete the meeting of creditors, (2) failure to file timely and accurate monthly
5 operating reports (“MOR’s”), and (3) failure to amend the schedules and statement
6 of financial affairs to include omitted information, including the recent disposition
7 of real properties. On February 13, 2014, FCW filed a pleading in joinder of the
8 UST’s Motion. It alleged, *inter alia*, that there were material errors in the
9 November MOR which distorted the reported income and caused the MOR to show
10 a false positive cash flow for the month.

11 At the February 27th hearing, FCW’s counsel reported, based on recent
12 correspondence from Debtor’s counsel, that the Debtor was incurring significant
13 postpetition liability to the Pacific Coast Calf Ranch for the cost of feeding heifers.
14 The expense had not been disclosed on the MORs. Debtor’s counsel acknowledged
15 the liability and promised to file corrected MORs within one week. The Debtor had
16 filed a disclosure statement, without a plan, one day before the continued hearing
17 and the court again continued the Motion and the case management conference to
18 March 27th to give the parties time to review the disclosure statement and any
19 accompanying plan.³

20 On March 27th, the court called the continued Motion together with the case
21 management conference and the hearing to approve the Debtor’s amended
22 disclosure statement. Prior to the March 27th hearing, FCW filed a supplement to
23 its joinder supported by evidence to show that the Debtor’s postpetition liability to
24 Pacific Coast Calf Ranch had increased to the approximate amount of \$30,000.
25 This liability still had not been reported on the Debtor’s MORs, including the most

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27 ³An amended disclosure statement was filed with a proposed plan on March 6, 2014,
28 and the court gave the Debtor an order shortening time to have the hearing for approval of
the disclosure statement on March 27th.

1 recent February MOR which had just been filed three days before the hearing and it
2 grossly distorted the dairy's reported profitability. Debtor's counsel was unable to
3 respond this issue other than to promise again that the MORs would be corrected
4 and amended. FCW vehemently opposed approval of the disclosure statement and
5 argued that the proposed plan was unconfirmable on numerous grounds, including
6 feasibility. Based, *inter alia*, on the Debtor's inability to file complete and accurate
7 MORs, the court denied approval of the disclosure statement, took the UST's
8 Motion under submission, and dropped the case management conference pending a
9 ruling on the Motion.

10 **Analysis and Conclusions of Law.**

11 Dismissal of a chapter 11 case is governed by § 1112(b) of the Bankruptcy
12 Code. It requires a noticed motion by a party in interest, here the UST, and a
13 hearing, which was initially held in this case on January 30, 2014. The Debtor has
14 not filed any evidence to support her opposition to this Motion. However, based on
15 representations from Debtor's counsel in response to the Motion, and in conjunction
16 with the court's case management conferences, the hearing was continued to
17 February 27, 2014, and again to March 27, 2024, at which time it was taken under
18 submission.

19 Section 1112(b) provides that the court shall convert or dismiss a chapter 11
20 case if it finds "cause" for dismissal, subject to two conditions applicable here.
21 First, the court must be able to find "and specially identify unusual circumstances
22 establishing that converting or dismissing the case is not in the best interests of
23 creditors and the estate." 1112(b)(2). Second, the debtor must establish that "there
24 is a reasonable likelihood that a plan will be confirmed within . . . a reasonable
25 period of time." § 1112(b)(3)(A). If the cause for dismissal does not include
26 substantial or continuing loss to or diminution of the estate, the debtor must also
27 establish that the grounds for dismissal will be cured within a reasonable period of
28 time fixed by the court. § 1112(b)(2)(B).

1 Pursuant to § 1112(b)(4), the term “cause” for dismissal of a chapter 11 case
2 includes two grounds applicable here. They are (1) substantial or continuing loss to
3 or diminution of the estate and the absence of a reasonable likelihood of
4 rehabilitation (§ 1112(b)(4)(A)), and (2) unexcused failure to satisfy timely any
5 filing or reporting requirement established by the Bankruptcy Code or any
6 applicable rule. § 1112(b)(4)(F).

7 Here, the record establishes that (1) the Debtor is incurring substantial
8 operating costs, which are not being disclosed and accurately reported on her
9 MORs, and (2) the Debtor appears to be unable or unwilling to file complete and
10 accurate MORs, or to even correct known errors in the MORs that have already
11 been filed. Finally, this Debtor is significantly under water. Her secured debts
12 alone are more than \$600,000 greater than the value of her assets (based on the third
13 amended schedules filed just before the hearing on this Motion) and she has almost
14 a million dollars of unsecured debt which can only be the result of prolonged
15 operating losses. FCW vehemently opposes this Debtor’s reorganization which
16 means there is virtually no likelihood of confirming a chapter 11 plan without a
17 vigorously contested, prolonged and costly confirmation hearing. In the event of a
18 chapter 7 liquidation, there would be nothing here for unsecured creditors and the
19 Debtor has not established the prospect of any significant distribution to unsecured
20 creditors through a confirmed plan.⁴ The Debtor has huge operational problems to
21 overcome before she can prove that any reorganization is possible, including
22 environmental restrictions on the discharge of effluent and a water well that needs
23 replacement. She has no apparent source of cash to fund the remedial work and
24 hasn’t been able to commit to any timetable for getting that done. Without timely
25 and accurate MORs, there is no basis upon which the court can even give the Debtor


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27 ⁴The proposed plan which the Debtor filed on March 6, 2014, proposes a total
28 distribution to unsecured creditors of \$20,000, with no interest, spread out over a period of
seven years, payable at the rate of \$238.10 per month.

1 the benefit of the doubt with regard to the reasonable likelihood of confirming a
2 plan.

3 **Conclusion.**

4 Based on the foregoing, the court finds and concludes that there is cause to
5 dismiss this case pursuant to § 1112(b). The Debtor has not satisfactorily complied
6 with the reporting requirements of the Bankruptcy Code and the Rules and she has
7 not shown a likelihood of being able to reorganize within a reasonable period of
8 time. The Debtor has not identified any unusual circumstances establishing that
9 dismissal is not in the best interest of creditors and the estate. Accordingly, the
10 court has no discretion to delay ruling on this Motion any further. The UST's
11 Motion will be granted and the case will be dismissed. A separate order will be
12 entered herewith.

13 Dated: March 31, 2014

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15 W. Richard Lee
16 United States Bankruptcy Judge
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Instructions to Clerk of Court
Service List - Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith to the parties below. The Clerk of Court will send the Order via the BNC or, if checked ☐, via the U.S. mail.

Debtor(s), Attorney for the Debtor(s), Bankruptcy Trustee (if appointed in the case), and ☒ Other Persons Specified Below:

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